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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1939

No. 138

Z. M. McCARROLL, Commissioner of Revenues of the State of Arkansas,
Appellant,
vs.
DIXIE GREYHOUND LINES, INC.,
Appellee.

BRIEF OF THE ATTORNEY-GENERAL OF THE STATE OF NEVADA AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING IN THE SUPREME COURT OF THE UNITED STATES.

GRAY MASHBURN,
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Deputy Attorney-General of the State of Nevada,
ALAN BIBLE,
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Amici Curiae.

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BRIEF OF THE ATTORNEY-GENERAL OF THE STATE OF NEVADA AS AMICUS CURIAE IN SUPPORT OF PETITION FOR REHEARING IN THE SUPREME COURT OF THE UNITED STATES.

This brief is submitted by the Attorney-General of Nevada as amicus curiae in support of appellant's petition for a rehearing of the case by this Honorable Court. The Attorney-General of Nevada on behalf of such State respectfully joins with the appellant and the State of Arkansas in asking that the petition for rehearing be

granted. The State of Nevada, of course, has no interest in the controversy as between the parties, but has a vital interest in the legal principles which are involved.

The case before the Court involves the application of the Arkansas Gasoline Tax Law to passenger busses engaged in interstate commerce over and along the public highways into and out of the State of Arkansas. It appears that under the Arkansas statute a gasoline tax of six and one-half cents per gallon must be paid by each said bus on every gallon of gasoline contained in the gasoline tank thereof, over and above twenty gallons, as a condition precedent to entry into Arkansas as payment for the use of the highway within that State.

Nevada has a law providing an excise tax on the distribution of motor vehicle fuel, including gasoline, used to propel motor vehicles on the highways of the State, the same being Chapter 74, Statutes of Nevada 1935. Section 2 of such statute is very similar to the Arkansas statute under consideration in this case, and as applicable law herein, we quote:

> SEC. 2. In addition to any other taxes provided for by law, every dealer shall, not later than the twenty-fifth day of each calendar month, render to the tax commission a statement of all motor vehicle fuel sold, distributed or used by him in the State of Nevada during the preceding calendar month, and shall pay an excise tax of four cents per gallon on all motor vehicle fuel so sold, distributed or used, in the manner and within the time hereinafter prescribed; *provided, however*, that from the tax found to be due upon any such statement duly and punctually rendered the dealer shall be allowed to deduct two percent thereof to cover the dealer's cost of collection of the tax

and of compliance with this act and the dealer's handling losses occasioned by evaporation, spillage or other similar causes.

Every person who shall use any inflammable or combustible liquid or other material other than motor vehicle fuel as herein defined to operate a motor vehicle on the highways of this state shall pay an excise tax of four cents for each gallon thereof so used, and shall render monthly statements and make monthly payments at the times and in the manner prescribed for dealers in this act, and such users shall be similarly allowed to deduct two percent of the tax found to be due upon any statement duly and punctually rendered as aforesaid.

Any owner or operator of a motor vehicle who shall import motor vehicle fuel or other fuel or material into this state in the fuel tank or tanks of any such motor vehicle in a quantity exceeding twenty-five (25) gallons in the fuel tank or tanks thereof, shall, upon demand of the tax commission or its duly authorized agent, pay to said tax commission on such excess motor vehicle fuel the excise tax required to be paid by dealers.

Nothing in this act shall be construed to require more than one payment of any excise tax upon, or in respect to, the same fuel.

Section 3 of the Nevada statute provides for the disposition and use of the excise tax in the following language:

The excise tax herein prescribed shall be paid on or before the twenty-fifth day of each calendar month to the state treasurer, who shall receipt the dealer therefor. The money

so collected by the state treasurer shall be by him placed to the credit of the Nevada state highway fund; * * *.

The term "dealer" as defined in the Nevada statute includes "every person * * * who shall use the motor vehicle fuel in this state after having imported the same * * * ." Sec. 1(d).

Nevada has and maintains many miles of State highways known as Federal Aid highways, constructed and maintained by the State as aided by funds of the Federal Government pursuant to the provisions of the Federal Highway Act, the same being Sections 1–56, both inclusive, of Title 23, United States Code Annotated. Pursuant to Section 15 of the Federal Act it is incumbent upon the State to maintain such highways and pay the cost thereof. Use of such highways, particularly by those engaged in the transportation of persons and property for profit, should be paid for by those engaged in such transportation. A fair measure of such use, as has been demonstrated in many cases, is the mileage measure, which as computed by gallons of motor vehicle fuel used, in our opinion provides an equitable tax for such use.

A motor bus or motor truck operator, under the majority decision, it seems to us, may so equip his vehicle with a fuel tank of sufficient capacity as to preclude the necessity of refueling in a State, even though the mileage operated may be many times more than the mileage operated in Arkansas in the instant case. Such a situation can and will arise in Nevada on U. S.-Nevada Highway No. 466, which said highway extends from Los Angeles, California, northerly into and across Nevada, thence through a portion of Arizona, and on into Utah. The Nevada portion of this highway is 72 miles in length. It carries heavy interstate traffic by

means of bus and truck transportation. It is obvious that the decision of the Court herein will materially affect the enforcement of the Nevada law.

The principle involved in the decision is important to every State confronted with the task and the financial burden of maintaining highways burdened with interstate as well as intrastate traffic. We respectfully submit that the vital interest of the State of Nevada in the revenue necessary for the maintenance of its State highways is most seriously threatened by the decision heretofore made in this case, and by reason thereof we respectfully request this Honorable Court to grant a rehearing of this important matter.

Dated, Carson City, Nevada, March 1, 1940.

GRAY MASHBURN,
Attorney-General of the State of Nevada,
W. T. MATHEWS,
Deputy Attorney-General of the State of Nevada,
ALAN BIBLE,
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